

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 801 OF 2005

Shri Sanjay Ganpati Ghorpade. ...Petitioner
V/s.
Sou.Suhasini Sanjay Ghorpade & Anr. ...Respondents

Shri Vijay Killedar for Petitioner.
Shri Rupesh Bobade i/b. Shri Bhushan A. Walimbe for
Respondent Nos.1 and 2.
Shri P.A. Pal, APP for State.

CORAM : V.M. KANADE, J.

DATED : AUGUST 2, 2006

P.C. :-

. Heard learned Counsel for the petitioner and
learned Counsel for the respondent.

2. The petitioner is challenging the order passed
by the J.M.F.C. Islampur who was pleased to award
maintenance to the respondents under Section 125 of the
Cr.P.C. Against the said order, the petitioner
preferred the revision application before the Court of
Additional Sessions Judge. His revision application was
also dismissed.

3. It is submitted by the learned Counsel for the

petitioner that the respondent had left the matrimonial house and there was no wilful refusal or neglect on his part to maintain her. It is submitted that the petitioner had also filed petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act and the order was passed in his favour. It is submitted that both the Courts below have not taken into consideration that the petitioner was paying the loan which was taken by his father and out of his total salary, he was receiving an amount of Rs.1000/-. It was submitted that therefore, the order passed by both the Courts below was liable to be set aside.

4. It is not possible to accept the submission made by the learned Counsel for the petitioner. Both the Courts have given concurrent finding that that there was wilful neglect on the part of the petitioner to maintain his wife. The Court has also taken into consideration that the respondent-wife was unable to maintain her. These two requirements have been proved by the wife, the court is competent to award maintenance. There is, therefore, no reason to interfere with the order passed

by both the lower Courts below. Secondly, merely because the order is open for the petitioner under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, that does not absolve him from his liability to maintenance under Section 125.

. With the result, the petition is dismissed.

(V.M. Kanade, J.)